

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Northstar Wireless, LLC)	File No. 0006670613
)	
SNR Wireless LicenseCo, LLC)	File No. 0006670667
)	
Applications for New Licenses in the 1695-1710)	Report No. AUC-97AUC
MHz, and 1755-1780 MHz and 2155-2180 MHz)	
Bands)	

ORDER ON REMAND

Adopted: January 24, 2018

Released: January 24, 2018

By the Chief, Wireless Telecommunications Bureau:

1. This Order on Remand (“Order”) is being issued by the Wireless Telecommunications Bureau (“WTB” or “Bureau”) to establish a procedure to afford Northstar Wireless LLC (“Northstar”) and SNR Wireless LicenseCo, LLC (“SNR Wireless”) (collectively “Applicants”) the opportunity to cure their Auction 97 applications pursuant to the mandate of the U.S. Court of Appeals for the District of Columbia Circuit in *SNR Wireless v. FCC*.¹

I. BACKGROUND

2. In August 2015, the Commission issued a decision, which found that the Applicants were not eligible for the very small business bidding credits they had sought in Auction 97 because DISH Network Corporation (“DISH”) had exercised *de facto* control over the Applicants.² Applicants appealed the Commission’s decision.

3. On appeal, the court of appeals held that the Commission “reasonably applied its longstanding precedent to determine that DISH exercised a disqualifying degree of *de facto* control over SNR [[Wireless]] and Northstar.”³ It also held, however, that the Commission did not give Applicants “adequate notice that, if their relationships with DISH cost them their bidding credits, the FCC would also deny them an opportunity to cure.”⁴ The court therefore remanded the matter to the Commission for

¹ *SNR Wireless LicenseCo, LLC, et al. v. Federal Communications Commission*, 868 F.3d 1021 (D.C. Cir. 2017) (*SNR Wireless v. FCC*).

² *Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz Bands*, Memorandum Opinion and Order, 30 FCC Rcd 8887 (2015) (*Northstar and SNR Wireless MO&O*) *aff’d on this issue and remanded on other grounds sub nom SNR Wireless. v. FCC*.

³ *SNR Wireless v. FCC*, 868 F.3d at 1025.

⁴ *Id.*

further proceedings consistent with its opinion,⁵ and it directed the Commission to give Applicants an opportunity to “negotiate a cure for the *de facto* control the FCC found that DISH exercises over them.”⁶

II. DISCUSSION

4. In the *Northstar and SNR Wireless MO&O* the Commission analyzed the relationship between Applicants and DISH and articulated its findings in detail. The Commission’s analysis, which was affirmed by the court, comprehensively explains to Applicants how specific features of the relationship between each Applicant and DISH, as evidenced by their various corporate agreements and by their bidding behavior throughout the auction, demonstrate that DISH exercises *de facto* control over Applicants.⁷ Pursuant to the court’s remand, we provide an opportunity for each Applicant to renegotiate its business arrangements with DISH and the other parties to its agreements in order to cure its ineligibility for the bidding credits it claimed in Auction 97, and for each Applicant to document any revisions it makes by supplementing the record with respect to its Auction 97 long-form application.

5. Proceedings with respect to these two applications⁸ are restricted and *ex parte* presentations are generally prohibited.⁹ Accordingly, pursuant to the Commission’s *ex parte* rules governing restricted proceedings,¹⁰ Applicants and each of the parties that filed written submissions referencing and regarding Applicants’ applications will remain parties subject to the requirements of those rules. Consistent with those requirements, Applicants will have **90 days** from the date of this Order to renegotiate their respective agreements with DISH and the other parties and to file the necessary documentation in the record to demonstrate that, in light of such changes, each Applicant qualifies for the very small business bidding credit that it sought in Auction 97. If either Applicant needs additional time to negotiate new or amended agreements, it may request up to an additional 45 days by submitting a letter request to the Bureau before Friday, April 20, 2018. The letter requesting additional time must be e-mailed to the Bureau, in care of Paul Malmud at Paul.Malmud@fcc.gov and served on all Parties of Record.¹¹

6. If either Applicant amends any of its agreements or enters into new agreements relevant to its eligibility for the very small business bidding credits, that Applicant must file an FCC Form 601, including Schedule B, in ULS.¹² The window for Applicants to electronically file such FCC Form 601s in

⁵ *SNR Wireless v. FCC*, 868 F.3d at 1046.

⁶ *SNR Wireless v. FCC*, 868 F.3d at 1025.

⁷ See *Northstar and SNR Wireless MO&O*.

⁸ Northstar’s original long-form application is ULS File No. 0006670613 and SNR Wireless’s original long-form application is ULS File No. 0006670667.

⁹ See *Wireless Telecommunications Bureau Announces that Applications for AWS-3 Licenses in the 1695-1710 MHz, and 1755-1780 MHz and 2155-2180 MHz Bands are Accepted for Filing*, Public Notice, 30 FCC Rcd 3795 (WTB 2015); 47 C.F.R. § 1.1208.

¹⁰ See 47 C.F.R. §§ 1.1202(d)(1) & note 3, 1.1208.

¹¹ The Parties of Record for ULS File No. 0006670613 (Northstar) are listed in Attachment A and the Parties of Record for ULS File No. 0006670667 (SNR Wireless) are listed in Attachment B.

¹² As noted, the further proceedings contemplated by this Order relate to the original long-form applications filed by Northstar (ULS File No. 0006670613) and SNR Wireless (ULS File No. 0006670667). Because of limitations with ULS, however, a new ULS file number will be generated for each Applicant when it files the Form 601 documenting its revisions. The record for the remand proceeding for each Applicant will encompass both ULS filings (*i.e.*, the record for the original ULS filing (ULS File No. 0006670613 for Northstar and ULS File No. 0006670667 for SNR Wireless) and the filings associated with the new ULS file number made pursuant to these procedures).

ULS will be open until **6:00 p.m. Eastern Time (ET) on April 24, 2018**.¹³ For the FCC Form 601, Applicants should follow the instructions that the Bureau released for Auction 97.¹⁴ Each Applicant should file all relevant information and documents to support its request for the very small business bidding credit as provided by the Commission's rules. For example, each Applicant must have a current FCC Form 602 on file when its FCC Form 601 is due.¹⁵ In addition, if an Applicant requests that any portion of its filing be withheld from public inspection pursuant to section 0.459 of the Commission's rules, that Applicant must attach a statement justifying that request and referencing the particular information for which confidential treatment is being requested.¹⁶

7. Within five business days after the submission of an Applicant's FCC Form 601 and any attachments thereto, the Bureau will make the application publicly available. Parties of Record will have 45 days from the date that an Applicant's FCC Form 601 is due to file comments about the Applicant's application.¹⁷ Pleadings may be filed electronically through ULS, or by paper.¹⁸ Parties are strongly encouraged to file electronically using ULS and all filings must be served on all Parties of Record, including the applicable Applicant.

8. We will provide each Applicant with a final opportunity to further amend its agreements to address any issues raised in filings submitted by any Parties of Record, if it so desires. Specifically, each Applicant will have up to 45 days from the day that comments are due from the Parties of Record to file any further amendments to its FCC Form 601. If necessary, an Applicant may submit a request to the Bureau requesting up to an additional 45 days to address issues raised by the Parties of Record. The letter requesting additional time must be filed in ULS prior to the end of the Applicant's initial 45-day response deadline, served on all Parties of Record, and a copy e-mailed to the Bureau, in care of Paul Malmud at Paul.Malmud@fcc.gov. If an Applicant further amends any of its agreements, the Parties of Record will

¹³ If either Applicant requests additional time to renegotiate, *see* text accompanying note 11 *supra*, we will adjust the timing for the filing window and responsive pleadings accordingly.

¹⁴ *See Auction of Advanced Wireless Services (AWS-3) Licenses Closes; Winning Bidders Announced for Auction 97*, Public Notice, 30 FCC Rcd 630, Att. D (WTB 2015) (*AWS-3 Procedures PN*). Due to limitations within ULS, in order for each Applicant to file FCC Form 601 and to request the very small business bidding credit (question 5 on Schedule B), a "market" area (questions 1-4 on Schedule B) must be identified. For administrative convenience, we will identify market BEA096, channel block H, for this purpose for Northstar and identify market BEA096, channel block I, for this purpose for SNR Wireless. We will advise Applicants of the procedure for including other licenses at the conclusion of this proceeding should it become appropriate to do so. Accordingly, at this time, there is no need for either Applicant to include all licenses for which it claims bidding credit eligibility.

¹⁵ *AWS-3 Procedures PN*, 30 FCC Rcd at 759-60.

¹⁶ *See* 47 C.F.R. § 0.459; *AWS-3 Procedures PN*, 30 FCC Rcd at 753-54. As with its original application and as required by section 0.459 of the Commission's rules, if an Applicant requests that any portion of its filing be withheld from public inspection pursuant to section 0.459, it must file both a confidential, unredacted version of the document and a redacted version of the document with the information it wishes to be treated as confidential redacted, accompanied by a request for confidential treatment. We remind the Applicants that, as indicated in the *AWS-3 Procedures PN*, "[b]ecause the required information bears on an applicant's qualifications, the Commission envisions that confidentiality requests will not be granted routinely." *AWS-3 Procedures PN*, 30 FCC Rcd at 753.

¹⁷ If an Applicant requests confidentiality of any information, the Bureau will consider requests by the Parties of Record to make such information available for their review. *See* 47 C.F.R. 0.459; 0.461. To the extent that a Party of Record is delayed in receiving information that should be made available to such Party, WTB will also consider extending the 45-day deadline.

¹⁸ To file pleadings, the Parties of Record should follow the instructions provided in *Incentive Auction Task Force and Wireless Telecommunications Bureau Announce That Applications For 600 MHz Licenses Are Accepted For Filing*, Public Notice, 32 FCC Rcd 7499 (WTB 2017).

have 30 days from the date that an Applicant's amended agreements are due to file comments about the amended agreements.¹⁹

9. Following its review of each record, the Bureau will refer the matter to the full Commission to determine whether either Applicant qualifies for the very small business bidding credit it sought in Auction 97.

III. ORDERING CLAUSE

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, and shall be effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Stockdale
Chief
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¹⁹ To file comments, *see* footnote 18 *supra* for instructions.

ATTACHMENT A

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¹ Contact information provided by some Parties of Record was incomplete; addresses and e-mails provided herein represent FCC staff's best efforts to ascertain complete contact information for all parties.

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ATTACHMENT B

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